IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

MFA.No. 780 of 2002(A)

OPMV.3202/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, IRINJALAKUDA
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APPELLANT: APELLANT/PETITIONER:

M.V. BINU, AGED 30 YEARS,
S/O. VISHWAMBHARAN, S.N. NAGAR,
IRINJALAKUDA.

BY ADV. SRI.BOBBYMATHEW KOOTHATTUKULAM
SRI.C.N.SAMEER

RESPONDENTS: RESPONDENTS/RESPONDENTS:
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1. E.S. SANTHA, VELLANTHARA HOUSE,
CHERUVALOOR, VALOOR, THRISSUR DISTRICT.

2. HARIDAS, S/O. MADHAVAN,
PUTHOOCHIRAYIL HOUSE,
SAW MILL ROAD, KOORKANCHERRY, THRISSUR.

3. MANAGER, ORIENTAL INSURANCE COMPANY,
MANAPPAT BUILDING, NORTH NADA,
KODUNGALLUR.

BY ADV. SRI.ANCHAL C.VIJAYAN
SRI.K.S.BHARATHAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.F.A No. 780 of 2002

Dated this the 13th day of August 2007

JUDGMENT

The appellant sustained injuries in a motor vehicle accident which took place on 19-1-1993 at 1.15 p.m. He filed an original petition claiming compensation by impleading owner, driver and insurer of the car which involved in the accident The 1st respondent did not contest. The 2nd respondent contested that there was no negligence on the part of himself but the accident occurred due to the negligence of the appellant. It was contended that the 2nd respondent was holding a valid driving licence. The 3rd respondent -insurer had admitted the existence of a valid policy of insurance for the vehicle but disputed the quantum of compensation claimed. It was contended that the accident occurred due to the negligence of the appellant himself who was crossing the road in front of the moving vehicle. Subsequently an additional written statement was filed contending that the car bearing Regn No. KLE 8095 was not involved in the accident. It was contended that the appellant fell down from the bi-cycle which he was riding and sustained injuries.

2. The Tribunal after considering the evidence found that the accident occurred due to the negligence of the driver of the car . The

Tribunal awarded Rs.14,000/- as compensation. It was also held that the insurer was liable to pay the compensation. The appellant /claimant who is dissatisfied with the quantum of compensation has filed this appeal.

3. The only question arising for consideration is whether the appellant is entitled to get any additional compensation. The medical certificate produced by the appellant shows that he sustained " Fracture of capitulum of left humerus". The appellant was treated as an inpatient in the Lal Memorial Hospital Irinjalakuda from 1-9-1993 to 30-9-1993. The petitioner produced a disability certificate which shows that he was having 5% disability. The Tribunal rejected the disability certificate on the ground that the appellant did not examine the Doctor. The learned counsel appearing for the appellant has strenuously argued before me that the Tribunal went wrong in not awarding any amount for disability . It is also argued that the petitioner was treated as an inpatient for one month and at the time of discharge he was advised to take rest for four months. It is argued that the Tribunal calculated the loss of earning only for two months and took a meagre amount of Rs.1,000/- as monthly income.

4. I do not find any reason to interfere with the finding of the Tribunal regarding the monthly income of the appellant. It fixed the income of the petitioner as Rs.1,000/- as there was no reliable evidence.

But I am of the view that the Tribunal ought have awarded loss of earning for 4 months. So the appellant is entitled to get 2,000/- on that count. If the disability certificate is accepted the amount of compensation payable on that count of will come to Rs.10,000/- instead of awarding the compensation for disability the Tribunal awarded an amount of Rs.4,000/- for loss of amenities. So he is entitled to get another 6,000/- on that count. So the appellant is entitled to get an additional compensation of Rs. 8,000/-

5. In the result, the appeal is allowed in part. An award is passed in favour of the appellant allowing him to recover an additional compensation of Rs. 8,000/- with 6% interest from the date of accident till the date of realisation. The 3rd respondent insurer is directed to deposit the amount. On deposit the appellant can withdraw the entire amount.

K.PADMANABHAN NAIR,JUDGE

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